



**A guide to the
legislation affecting
Healthwatch Havering**

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Healthwatch England has developed 'A guide to the legislation for local Healthwatch' this document is a simplified version and sets out how the guidance is translated for Healthwatch Havering.

The information provided by Healthwatch England is available from enquiries@healthwatch.co.uk

1 Information about Healthwatch Havering

The Government has put in place legislation that places duties or obligations on local Healthwatch. This means that there is a requirement for us to undertake certain actions or activities. In addition, there are some powers for local Healthwatch. These allow us to undertake an action or activity at our discretion. The aim of this document is to help residents understand what these requirements mean for you.

As local Healthwatch are new entities and our status and functions have not been tested through case law, the information here should be regarded as our own and Healthwatch England's subjective interpretation.

1.1 What does the Legislation say local Healthwatch must do?

Local Healthwatch are corporate bodies and within the contractual arrangements made with their local authority must carry out particular activities. A lot of the subsequent legislative requirements are based on these activities which include:

- Promoting and supporting the involvement of local people in the commissioning, the provision and scrutiny of local care services.
- Enabling local people to monitor the standard of provision of local care services and whether and how local care services could and ought to be improved.
- Obtaining the views of local people regarding their needs for, and experiences of, local care services and importantly to make these views known.
- Making reports and recommendations about how local care services could or ought to be improved. These should be directed to commissioners and providers of care services, and people responsible for managing or scrutinising local care services and shared with Healthwatch England.
- Providing advice and information about access to local care services so choices can be made about local care services. This is undertaken by signposting to the relevant London Borough of Havering provider which is currently Family Mosaic.
- Formulating views on the standard of provision and whether and how the local care services could and ought to be improved; and sharing these views with Healthwatch England.

- Making recommendations to Healthwatch England to advise the Care Quality Commission to conduct special reviews or investigations (or, where the circumstances justify doing so, making such recommendations direct to the CQC); and to make recommendations to Healthwatch England to publish reports about particular issues.
- Providing Healthwatch England with the intelligence and insight it needs to enable it to perform effectively.

Healthwatch Havering must produce a report in relation to our activities at the end of each financial year. Our reports must address such matters as the Secretary of State may direct and will include details of expenditure.

1.2 Transparency and accountability of decisions

The Regulations for local Healthwatch state that each local Healthwatch must have a procedure for making relevant decisions. This procedure includes:

- provision as to who may make such decisions;
- provision for involving lay persons or volunteers in such decisions;
- provision for dealing with breaches of any procedure referred to in the two previous points which should include the circumstance in which a breach would be referred to the local authority.

The procedure must be complied with and must be published prior to any relevant decisions being made. Any amendments to procedures should be published as soon as possible.

A relevant decision should not be taken without the necessary published procedure being in place. Relevant decisions include:

- how to undertake our activities
- which health and care services you are looking at covering with our activities
- the amounts you will spend on our activities
- whether to request information
- whether to make a report or a recommendation
- which premises to enter and view and when those premises are to be visited
- whether to refer a matter to an overview and scrutiny committee
- whether to report a matter concerning our activities to another person
- any decisions about subcontracting

After a relevant decision has been made by us this will be published in the minutes of the board meeting.

1.3 [Public admission to meetings](#)

Our Healthwatch meetings, including board meetings, will be open to the public where items on the agenda are looking at your “activities” (defined earlier as the 8 activities listed under the section “What does the Legislation say local Healthwatch must do?”

It is possible, by resolution, to exclude the public or news agencies from a meeting (or part of a meeting) where publicity would be prejudicial. This could relate to the confidential nature of the business or for other special reasons stated in the resolution such as receiving information, reports or advice from third parties. This is a decision that would need to be made on a meeting by meeting basis by Healthwatch Havering.

For meetings in public (or parts of), at least three days before the meeting we will post a notice of the time and place of the meeting at our offices and the Town Hall. Upon request from a media outlet we will provide a copy of the agenda and relevant papers. Minutes of these meetings will be made available after the meeting on our website.

1.4 [What does the Legislation say about what local Healthwatch can do?](#)

Healthwatch Havering may involve persons or organisations (other than the local authority) to help us carry out some (but not all) of our activities, we may therefore choose to subcontract the delivery of particular activities.

Healthwatch Havering can ask providers for information which they must make available to us. For public bodies, Healthwatch Havering must rely on good relationships or use the Freedom of Information Act to get information. However, there is a separate requirement on NHS bodies and local authorities to implement the necessary arrangements to ensure that independent providers respond to our requests for information.

Healthwatch Havering has an additional reporting power enabling us to refer matters relating to social care services to an overview and scrutiny committee or a local authority. These committees must then have regard to any relevant information we have sent to them.

Healthwatch have an additional power to Enter and View providers so we can observe matters relating to health and social care services. These powers do not extend to services relating to local authorities’ social service’s functions for people under the age of 18.

2 **Frequently asked questions**

2.1 [What is meant by local care services - does it cover health and social care?](#)

Local care services are defined as services provided as part of the health service in England, as well as services provided as part of social services functions. We would therefore cover both health and care services.

2.2 [What is our role in relation to children and young people?](#)

The expectations with regards to the work of local Healthwatch are the same for adults and children. The only difference being that local Healthwatch do not have the

power to “Enter and View” premises where services relating to a local authority’s social services functions are being carried out for people under the age of 18.

2.3 [What happens to our reports and recommendations?](#)

To help make the views of people known to the people that are responsible for the commissioning, providing, managing or scrutinising of local care services, we can make reports and recommendations. These reports and recommendations can cover how local care services could or ought to be improved. The service providers must have regard to our views, reports and recommendations and respond to us explaining what action they will take, or why they are not taking action. Our reports and recommendations should also be shared with Healthwatch England.

2.4 [What is the requirement in relation to our annual reports?](#)

By the 30th June, each local Healthwatch must produce a report in relation to our activities for the financial year that ended 31st March. These reports must address such matters as the Secretary of State may direct and will include information about the amount of our (and subcontractors that are delivering Healthwatch activities) spending and details what those amounts were spent on.

Our reports must be made publicly available and a copy sent to each of the following:

- Healthwatch England
- the local authority
- NHS England
- each clinical commissioning group, whose area or any part thereof, falls within the area of the local authority
- any overview and scrutiny committee of the local authority
- the Care Quality Commission

Further Directions about local Healthwatch annual reports may be given by Healthwatch England at any time

2.5 [What is our role in relation to Enter and View?](#)

Our Healthwatch have an additional power to Enter and View providers so we can observe matters relating to health and social care services. These powers do not extend to Enter and View of services relating to local authorities’ social services functions for people under the age of 18.

Organisations must allow an authorised representative to Enter and View and observe activities on premises controlled by the provider as long as this does not affect the provision of care or the privacy and dignity of people using services. Providers do not have to allow entry to parts of a care home which are not communal areas or allow entry to premises if their work on the premises relates to children’s social services.

Our Healthwatch or the relevant contractor must comply with and publish a procedure for making decisions about who may be an authorised representative; updating this procedure if it is amended. Our Healthwatch must maintain a list of individuals who are authorised representatives, this is available on written application; and provide each authorised representative with written evidence of their authorisation.

2.6 Do authorised representatives need a Disclosure and Barring Service (DBS) check?

The Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) have merged to become the Disclosure and Barring Service (DBS). CRB checks are now called DBS checks

DBS check applicants must be 16 or over. There are 3 types of check:

- **Standard:** This will check for spent and unspent convictions, cautions, reprimands and final warnings, and will take about 2 weeks.
- **Enhanced:** Includes the same as the standard check plus any additional information held by local police that's reasonably considered relevant to the workforce being applied for (adult, child or 'other' workforce). It takes about 4 weeks.
- **Enhanced with list checks:** This is like the enhanced check, but includes a check of the DBS barred lists, and takes about 4 weeks.

It is up to each local Healthwatch to decide the level of check we apply for, however as Healthwatch activity is not a regulated activity, we do not carry out the enhanced with list checks. Our understanding is that while a standard check should be sufficient, the DBS would recommend we may want to apply for an enhanced check if the person will be coming into contact with children and vulnerable adults.

Healthwatch Havering must also be satisfied that the individual is a suitable person for the purposes of Enter and View, and observing activities on premises owned or controlled by a services-provider.

2.7 Are there requirements relating to campaigning?

The regulations prevent a local Healthwatch from being set up as a political body or making political activities its main activity. The regulations allow local Healthwatch to speak out and to campaign (including for policy or legislative change) provided it is in support of their core purpose of being a consumer champion.

Healthwatch Havering must not give support or funding to a political party, nor to a candidate or politician. Healthwatch Havering must not be used as a vehicle for the expression of political views. Healthwatch Havering must not endorse or comment upon any party or candidate but instead concentrate on the issue that they are raising as it relates to consumers.

During an election period, Healthwatch Havering should be careful not to produce material that could be regarded as "election material", e.g. anything that explicitly

advocates a particular political party or party candidate or advises on voting for or against a particular party or candidate.

2.8 [What are the requirements relating to work with Healthwatch England?](#)

The Government recognises the strength of a network of 153 organisations with a local and national remit, and therefore places a number of requirements on us to work with Healthwatch England. We must share our views, as well as any reports or recommendations we make about how local care services could or ought to be improved with Healthwatch England. Healthwatch Havering must provide Healthwatch England with the intelligence and insight needed to enable it to perform effectively. We are also able to make recommendations to Healthwatch England to advise the Care Quality Commission to conduct special reviews or investigations or recommend that Healthwatch England publish reports about particular issues. Healthwatch Havering must send Healthwatch England our annual reports. The hub, known as Research Healthwatch England has been set up as a route to facilitate the sharing of views and information to help meet the requirements within the legislation.

2.9 [Must local Healthwatch use the Healthwatch trademark?](#)

Healthwatch Havering must, by the date set by the local authority, apply to Healthwatch England for a licence to use the Healthwatch trademark. This trademark must be used in relation to our activities. If Healthwatch England is considering or taking out infringement proceedings, Healthwatch Havering must provide advice, support or other assistance as required.

2.10 [What are the requirements relating to lay people and volunteers?](#)

A lay person is someone who is not a health or social care professional or an employee of a local Healthwatch organisation. A volunteer is a person who is not being paid to be a member or Director of a local Healthwatch or a person who is engaged in carrying out local Healthwatch activities. Each local authority will enter into bespoke arrangements with its own local Healthwatch and the issue of lay and volunteer involvement will be covered in these contracts. The governance arrangements of the local Healthwatch must include provision for the involvement of lay persons and volunteers in the governance of the body and involve lay persons and volunteers in your activities.

2.11 [Does Healthwatch cover private sector services?](#)

Healthwatch England has sought guidance from the Department of Health on this issue. Their response is that Healthwatch activities cover private and independent providers who are in receipt of public funding (e.g. providers who provide services to both self-funders and publicly funded service users).

Under the 2007 Act, Healthwatch Havering activities relate to the NHS and local authority social services. This means that services outside this (e.g. privately funded care that is not provided as part of the NHS or as part of local authority social services) are not within the scope of Healthwatch Havering activities.

However, as local Healthwatch organisations are not statutory bodies, what we can and cannot do is not governed by legislation in the same way as it would be for statutory bodies. We could (in principle) voluntarily choose to cover private and independent providers not in receipt of public funding. However, our constitution or governing document would need to allow this and currently it is the case the Healthwatch Havering remains within the scope of the Healthwatch related activities as set out in the legislation. We take the view that our local authority funds us to deliver our statutory functions and to extend our role to the private sector we should secure alternative funding.

2.12 What role does Healthwatch have in relation to Wales or Scotland?

Healthwatch England has sought guidance from the Department of Health on this issue. Their response is that the remit of a local Healthwatch organisation would extend to people from the devolved regions receiving services in England as part of the health service. For example, if an individual living in Wales was receiving services in an English local authority as part of the health service, that individual would be part of the group of “local people” covered by the local Healthwatch organisation for that area.

The remit of a local Healthwatch organisation would also cover people from England who use services in the devolved regions as part of the health service or as part of the social services functions of an English local authority (e.g. a placement in a care home). For example, if an individual from an English local authority was receiving social services in Wales, arranged by that local authority as part of its social services functions, that individual would be part of the group of “local people” covered by the local Healthwatch organisation for that local authority.

2.13 What are the requirements relating to being a Social Enterprise?

Healthwatch Havering must be a body corporate which is a social enterprise. We would be considered to be a social enterprise if a person might reasonably consider that we act for the benefit of the community in England and we satisfy the criteria in the local Healthwatch regulations including that lay people and volunteers are involved in the governance.

Healthwatch Havering is a company limited by guarantee. It is not registered as a charity, for technical legal reasons.

There are additional criteria which only apply to social enterprises that are not:

- a company limited by guarantee and registered as a charity in England and Wales;
- a community interest company registered as a company limited by guarantee; and
- a charitable incorporated organisation.

Healthwatch Havering complies with those additional criteria.

2.14 What is our role in relation to the Care Quality Commission?

We may ask Healthwatch England to advise the Care Quality Commission about any special reviews or investigations which we think may be required. If necessary, we may bypass Healthwatch England and make the request directly to the Care Quality Commission. While not governed by legislation, we have developed a good relationship with our Care Quality Commission inspectors and share information with them about providers. If we are ever concerned about the quality or safety of a service, where the concern does not amount to a safeguarding issue where an immediate risk is posed to an individual, then our concern would be flagged to our Care Quality Commission Compliance Manager who can determine if there is a breach of regulations.

2.15 What is our role in relation to Trust Special Administrators?

Trust Special Administrators can be appointed by the NHS following a process in which the Trust is found to be unsustainable. Once appointed, the Trust Special Administrator must offer to meet with you and ask you for a written response of your views.

2.16 What is our role in relation to Overview and Scrutiny?

Healthwatch Havering can escalate matters to the overview and scrutiny committee of the London Borough of Havering where we feel it necessary to do so. The overview and scrutiny committee must acknowledge receipt and keep us informed of any action they take.

2.17 What is our role in relation to Health and Wellbeing Boards?

Healthwatch Havering have a right to attend our local health and wellbeing board. Whilst there is nothing forcing us to attend, we have chosen to take up our place on the Board. The legislation gives the Healthwatch Havering equal status and therefore the Healthwatch Havering have a vote. However, the London Borough of Havering do have the power to restrict who can vote but this must be used in consultation with the members of the Health and Wellbeing Board.

2.18 What is our role in relation to Quality Accounts?

A Quality Account is a report about the quality of NHS services provided by an NHS healthcare provider. Under the regulations each provider has a legal duty to publish reports annually and make these available to the public.

Our local Service providers must send Healthwatch Havering a draft version of their Quality Account by April 30th. Healthwatch Havering can choose to produce a statement on whether or not we consider, based on the views of consumers and users and other information we have access to on the provider, that the report is a fair reflection of the full range of services provided. This statement then has to be included in the Appendix of the Quality Account.

2.19 What are the requirements relating to the Public Sector Equality Duty?

Healthwatch England's preliminary view is that local Healthwatch are not subject to the specific duties set out in the Equality Act (Specific Duties) Regulations 2011. However, we are subject to the general equality duty which requires us to have "due regard" to the relevant statutory needs in your work.

2.20 What are the requirements relating to Freedom of Information for Healthwatch Havering?

We will need to respond to Freedom of Information Act Requests (FOIA requests). Healthwatch England has developed a guidance document, which includes templates that we will be able to use to process FOIA requests.

It is also possible that we will have been seen to hold information about our Local Authority. We are discussing with London Borough of Havering to agree a FOIA arrangement to have in place should we receive such requests.

We hope that you find this information helpful about the legislation that supports the role of our Healthwatch below are listed further sources of information

The Local Government and Public Involvement in Health Act 2007

- The Health and Social Care Act 2012.
- National Health Service Act 2006
- The Equality Act 2010
- The Freedom of Information Act 2000.
- The Public Bodies (Admission to Meetings) Act 1960
- 35 Section 149 of the Equality Act 2010